

**THE BILL BLACKWOOD
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Assessing the Need for a Pursuit Policy

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Abstract

Police pursuits are an example of the dangers of the law enforcement profession. When a suspect decides to elude the police, he not only endangers his life, but also the lives of the passengers in the suspect's vehicle and the lives of the police officers and innocent persons.

When a police officer decides to chase a fleeing vehicle, he/she makes the choice to take responsibility for the outcome of the event. Fortunately, most pursuits end with the suspect being apprehended and no serious injuries. However, there are incidents where the suspect, the officer, or an innocent person is seriously injured or dies as a result of a police pursuit.

The information included in the paper is a brief assessment of the need for police agencies to establish the best pursuit policy. The information includes descriptions of restrictive and discretionary types of policies.

Further, the information will be used to assess the need to update the current Austin I.S.D. Police Department pursuit policy. The information leads to the recommendation that the Department review and revise the current policy.

Introduction

The purpose of researching the need for a pursuit policy is to assess the need to change or modify the current pursuit policy used by the Austin Independent School District Police Department. Recently, much has been focused on high speed police pursuits. Police pursuits should be given as much attention as deadly force, because the pursuits can result in the deaths and injuries to law enforcement officers, fleeing suspects and innocent persons. Like the use of firearms, the results are costly in litigation and bad publicity. Unlike firearms, deaths and injuries resulting from pursuits are usually unintentional.

Careful attention should be given to the policy that governs pursuits. Some departments use a discretionary pursuit policy, which allows officers to make all decisions about how the pursuit is handled (Nugent et al).

A restrictive policy will set definite limits on how the pursuit is handled. Restrictions will include the number of units involved in the pursuit and circumstances in which the pursuit must be terminated (Nugent et al).

A discouraging type of policy will prohibit pursuits in all but the most extreme situations. With this type of policy, a pursuit is justified only when the officer has knowledge or reasonable belief that the violator has committed or attempted to commit a serious felony (Nugent et al).

The issue to be examined is the need to develop a pursuit policy that is restrictive, but one that will allow the officer to use discretion in initiating or terminating a pursuit. The information included in the following research will identify legal and civil issues

that evolve around high speed pursuits, and will aid police administrators planning to update current pursuit policies.

Historical, Legal and Theoretical Context

A pursuit is defined as "an active attempt by a law enforcement officer on duty in a patrol car to apprehend one or more occupants of a moving vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his speed or by ignoring the law enforcement officer's attempt to stop him" (Sheriff, 1995. 60).

There was a time when law enforcement agencies had little concern against civil litigation following pursuits, because the doctrine of "sovereign immunity" prevent the government from being held liable for the negligent acts of its employees. The current trend is not to immunize the agencies for the actions of police officers (police, March 1997.20).

In most states the laws exempt drivers of emergency vehicles from obeying certain traffic regulations, such as speed, right of way, and traffic signals or signs. However, these emergency vehicles must use sirens and/or flashing lights and be responding to an emergency situation. The police are not held negligent solely for disregarding traffic regulations during an emergency (police).

Today these exemptions do not protect the police officer that drives with "reckless disregard" for other people's safety. The officer remains under a duty to drive with due regard for all persons using the roadways. The officer must not operate his vehicle in a

"negligent, careless or wanton manner," and he must exercise "due care" in approaching an intersection (police).

Incidents involving officers driving in the wrong lane at an excessive speed, or an innocent person's vehicle broadsided by the police vehicle in pursuit without lights and siren, or the excessive number of police vehicles traveling in excess of 100 mph involved in the pursuit of a driver who ran a red light, are just a few examples of cases where the court rules in favor of the plaintiffs (Police).

The courts have ruled the police are not liable in cases where the dispatched officer exceeded the speed limit only slightly and was using lights and sirens responding to a felony in progress, where a known and extremely dangerous fugitive had eluded capture for more than a year was fleeing FBI agents, or the case of the driver of a stolen vehicle with police in pursuit following the established pursuit policies (police).

Due to uncertainty in the Texas law on pursuit liability, police agencies and officers are confused on how they may properly discharge their law enforcement responsibilities while avoiding liability for injuries to, or the death of, innocent citizens and the suspects being pursued. The answer is to have an established pursuit policy. But, how can the policy be stated simply enough to be easily understood and followed and at the same time be strong enough to prevent civil liability when the pursuit ends in injury or death? (Texas Police Journal, February 1997. 6).

Review of Literature and Practice

It is well known that all police agencies should have established pursuit policies. But, the decision of what type of policy is one of great dilemma. The agencies' considerations

include the apprehension of known offenders and the safety of the law enforcement officers, of the fleeing suspects and passengers, and of innocent bystanders.

Any pursuit subjects the agencies to a high risk of personal injury, loss of life, and property damage. If the injured or killed is a police officer, the agency suffers significant loss. If the injured or killed is a private citizen, the agency may be liable for damages in civil litigation. If the injured or killed is an innocent bystander, liability will be impossible to avoid (Nugent et al, 2).

But, if the agency does not engage in pursuit of violators, its credibility with law abiding citizens and violators will suffer. The prohibition of pursuits will only encourage violators to flee the police, which decreases the probability of apprehension.

There are three policy models in the literature: 1) Discretionary - allowing officers to make all major decisions relating to initiation, tactics, and termination; 2) Restrictive - placing certain restrictions on officers' judgments and decisions; and 3) Discouraging - severely cautioning against or discouraging any pursuit, except in the most extreme circumstances (2).

In the discretionary policy the officer is provided broad guidelines and a list of factors that officers should consider in the decision to initiate a pursuit. All major decisions that relate to pursuit initiation, tactics, and termination are left to the individual officer (Lewis, 93)

The restrictive policy removes some discretion from the individual officer and places certain restrictions on his judgment. This policy may forbid pursuits when the fleeing driver is a juvenile, a traffic offender, or a property offender. This policy will also set

guidelines for the number of units involved in the pursuit, the duties of each unit involved, and termination guidelines for the pursuit (Lewis).

The discouraging policy severely limits occasions for pursuits to clearly define circumstances where the risks of nonpursuit outweigh the risks of pursuit. This may include a reasonable belief that the fleeing suspect committed a violent felony (Lewis).

Discussion of Relevant Issues

In police pursuit cases, liability can be established as a use of excessive force resulting in death or personal injuries, under the 42 U.S.C. 1983 of the Federal Civil Rights Act. There must be a "deliberate or conscious indifference" to one's constitutional rights, caused by the agency's own "unconstitutional governmental policy or custom." (Texas Police Journal, February 1997. 6)

To avoid potential liability, a suggested policy may read as follows: Pursuit of a suspect may be engaged whenever a reasonably-prudent officer, under the same or similar circumstances, could believe, in the exercise of discretion, that the need immediately to apprehend the suspect outweighs a clear risk of harm to the public in initiating and in continuing the pursuit. (Texas Police Journal, March 1997)

An officer and his employing governmental entity are immune from liability whenever the officer is entitled to qualified immunity from liability. An officer is entitled to qualified immunity from liability whenever he can prove that he (1) acted in good faith; (2) in discharging discretionary duties; (3) within the scope and course of employment or authority (Texas Police Journal).

In the City of Lancaster v. Chambers, the Texas Supreme Court defined the terms (1)

good faith, (2) discretionary duties, and (3) scope and course of employment or authority. An officer acts in good faith in a pursuit case if "a reasonably prudent officer, under the same or similar circumstances, could have believed that the need to immediately apprehend the suspect outweighed a clear risk of harm to the public in continuing the pursuit." (Texas Police Journal)

Discretionary duties are duties that the law has not prescribed and defined with such precision that nothing is left to the exercise of discretionary judgment. An official acts within the scope of his authority if the officer is discharging the duties generally assigned to the officer (Texas Police Journal)

The courts are asking whether the purpose of the pursuit warrants the risks involved. Conventional wisdom is that a pursuit for a traffic offense does not license an officer to involve the degree of risk which may be acceptable when chasing a violent felony suspect. Apparently the courts agree that the police should not pursue the traffic violator aggressively, but can pursue at greater risk the suspected felon (Alpert, 1992. 28).

Conclusion

It is evident that any pursuit is a potentially hazardous situation that could result in injury or death. The courts are scrutinizing the decisions and actions of police officers involved in pursuits. This scrutiny affects the pursuit policies and procedures of law enforcement agencies nationwide.

It is imperative that law enforcement agencies establish pursuit policies that govern the method in which the officers are trained in handling pursuits. The training should

include presentation of the department policy and procedures regarding pursuits. In addition, training should include court decisions on officers' decisions, identifying pursuit situations in which accidents are likely to occur and define societal concerns on pursuits. Proper training could influence the officers to use cautionary measures when initiating and/or continuing a pursuit (Alpert, March 1986).

Also important in pursuit policies are the guidelines established to reduce the risks of situations in which individual officers could be held liable. The policy should identify pursuit tactics that would reduce the risks of accidents and incorporate them into pursuit policies. These policies should balance the agency's need to apprehend the suspect against the need to preserve and protect the safety of the community (Alpert).

Elements to consider in balancing those needs would include a provision for discontinuing pursuits in progress. The longer a pursuit continues, the higher the risk of probability that an accident could occur, resulting in death or injury.

Another element to consider is the monitoring of a pursuit by a supervisor. Hopefully, the supervisor, having more experience and rationale, will prevail with sound decision-making skills. The decision to terminate a pursuit should be made when the safety of others outweigh the apprehension of the fleeing suspect.

Finally, the agency should address the number of patrol units involved in a pursuit. Common sense would indicate that as the number of patrol units involved in the pursuit increases, so does the probability of an accident. The policy should define the number of units to be involved in any pursuit.

In reviewing the Austin I.S.D. Police Department pursuit policy, it seemed to be discretionary. It seems to be vague in nature and does not communicate a clear and concise direction for the officer to take (AISD Manual).

The policy allows for officers to pursue vehicles when they suspect the violator has engaged in a felony grade offense and is attempting to escape, or the suspect vehicle is being operated in such a manner that is creating a greater danger to the public than would the pursuit of that vehicle by the officer (AISD Manual).

However, whenever it becomes apparent that the suspect vehicle is attempting to evade by increasing speed, or by erratic driving, and that action constitutes a greater danger to the public than the offense being committed, the officer shall terminate the pursuit (AISD Manual).

The policy also states that and Austin I.S.D. Police Department officer that initiates a pursuit shall notify the Austin Police Department Communications Division. The pursuit will then be monitored by an Austin P. D. supervisor, who may make the decision to terminate the pursuit (AISD Manual).

It is apparent that the Austin I.S.D. Police Department should review its current pursuit policies to determine the real needs of the department, as well as the needs of the community. It would be advantageous for all police agencies to review their policies annually to determine the needs for revision, based on the changes in the laws and court decisions.

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